

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BERNHARD KUHMSTEDT,

Plaintiff,

- against -

LIVELY MEDIA, INC.

Defendant.

Docket No. 3:19-cv-5858

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Bernhard Kuhmstedt (“Kuhmstedt” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Living Media, Inc. (“Living Media” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of three copyrighted Photographs of the American boy band NSYNC, owned and registered by Kuhmstedt, a professional photographer. Accordingly, Kuhmstedt seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).  
3. This Court has personal jurisdiction over Defendant because Defendant transacts business in California.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Kuhmstedt is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at Westermuehlstr 3, Munich 80469.

6. Upon information and belief, Living Media is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 201 Redwood Shores Pkwy, Suite 300, Redwood City, California 94065. At all times material, hereto, Living Media has owned and operated a website at the URL: www.Zimbio.com (the “Website”).

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff’s Ownership of the Photographs**

7. Kuhmstedt photographed the American boy band NSYNC (the “Photographs”). A true and correct copy of the Photographs is attached hereto as Exhibit A.

8. Kuhmstedt is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

10. The Photographs were registered with the United States Copyright Office and were given registration number VA 2-164-958.

#### **B. Defendant’s Infringing Activities**

11. Living Media ran an article on the Website entitled *The ‘90s Fashion Choices Justin Timberlake Would Probably Like Us To Forget*. See:

<http://www.zimbio.com/90s+Nostalgia/articles/qZkXn5APItp/90s+Fashion+Choices+Justin+Ti>

mberlake+Probably. A true and correct copy and screenshots of the Photographs on the Website is attached hereto as Exhibit B.

12. Living Media did not license the Photographs from Plaintiff for its article, nor did Living Media have Plaintiff's permission or consent to publish the Photographs on its Website.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST LIVING MEDIA)**  
**(17 U.S.C. §§ 106, 501)**

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Living Media infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. Living Media is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Living Media have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Living Media be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded punitive damages for copyright infringement;
5. That Plaintiff be awarded attorney's fees and costs;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
September 19, 2019

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz  
Richard P. Liebowitz  
11 Sunrise Plaza, Suite 305  
Valley Stream, New York  
Tel: 516-233-1660  
RL@LiebowitzLawFirm.com

*Attorneys for Plaintiff Bernhard Kuhmstedt*